

# CHEHALIS RIVER BASIN FLOOD AUTHORITY

## ISSUE PAPER: GOVERNANCE

The Chehalis River Basin Flood Authority has determined that a multi-county interlocal agency is necessary to coordinate near-term Chehalis River basin-wide flood hazard management. The agency may initially take the form of a watershed management partnership. The agency could then operate as a watershed management partnership on an ongoing basis, or it could be replaced by a multi-county flood control zone district. The option of a multi-county flood control zone district will require statutory changes likely to take longer than the Authority has to establish an initial funding source.

Still, it is with an eye to the future type of entity that would manage Chehalis River Basin flood solutions that the issue of governance must be addressed among those affected by flooding in the Basin, including portions of Lewis County, Grays Harbor County, Thurston County, cities in the Basin, the State of Washington, the Chehalis Tribe, and others.

This paper examines the issue of governance: how should the interlocal agency be structured to define expectations, grant power, and verify performance? In other words, how should the agency be set up to exercise the management of policy and funding to meet the short-term objectives embodied in the interlocal agreement that will create the initial interlocal agency, and the long-term, more permanent, objectives of the Chehalis River Basin “flood district” in whatever form that entity ultimately takes.

It is necessary to review the authorization and limitations of potential long-term entities in order to inform, if not guide, the initial governance decisions for the interlocal agency.

### Flood Control Zone District Governance

The flood control zone district authority is relevant for two reasons. First, the members of the initial interlocal agency will include at least one (Lewis County), likely two (to include Grays Harbor County), and possibly three flood control zone districts. Second, with statutory changes, the creation of a multi-county flood control zone district may become possible, and the entity of choice to manage flooding in the basin over the long term.

Based on the current statutory authority, a Flood Control Zone District (“FCZD”) is created by a vote of the Board of County Commissioners within a County. The FCZD boundary may include a portion of a county or the entire county, including all the cities within the boundary. Individual FCZDs could be created and combined by interlocal agreement to achieve a similar end. The statute does not allow overlapping FCZDs. The FCZD makes decisions on rates, taxes, and/or assessments for flood control within the boundary, including capital, maintenance and operations, and administrative costs. The Board of County Commissioners serves as the initial Board of Supervisors for an FCZD, but there is an option to have a separate elected board for a District.

It is assumed that each county would form an FCZD whose border would match the border of the Chehalis River Basin as a sub-zone.

RCW 86.15.025 authorizes the formation of sub-flood control zone districts, or subzones, providing also that subzones “shall have authority to exercise any and all powers conferred by the provisions of RCW 86.15.080 as now law or hereafter amended.” [RCW 86.15.080 defines the general powers of flood control zone districts.]

The supervision of subzones is also provided for in RCW 86.15.050. The section states that the board of county commissioners (BOCC) in any county shall be, by virtue of their office, the supervisors of any subzones.

In subzones with more than 2,000 residents, however, the law provides two ways that subzones supervisors can be elected (at the expense of the subzone). The first method requires that the Board authorize, by resolution, the election of subzone supervisors. The second method requires a citizen petition to authorize an election of subzone supervisors. In order for a citizen petition to be valid, it must have been signed by more than 15% of the registered voters, in the area of the subzone, who voted in the last election. Under current law, there are to be three elected zone supervisors.

The supervisors are authorized to adopt zone budgets after a public hearing. The supervisors also may authorize property taxes up to \$.50 / \$1,000 in assessed value, charges on properties served and who contribute to increased stormwater runoff, and assessments on property specially benefited by flood improvements. Property taxes in excess of \$.50 / \$1,000 may be authorized by vote of those in the zone.

The county engineer is authorized to administer subzones, although those duties may be delegated. In subzones with elected supervisors, the law (RCW 86.15.060) authorizes the supervisors to “provide for administration of the affairs of the zone by other than the county engineer.”

Finally, for any subzone, RCW 86.15.070 authorizes the Board to appoint an advisory committee of up to five members to serve without pay and at the pleasure of the Board. The Board of a countywide FCZD is authorized to appoint an advisory committee of up to fifteen members.

The decision whether or not to authorize election of supervisors in a subzone impacts governance of the entity in a number of ways. As noted previously, elected supervisors would presumably make decisions about flood hazard management, funding, etc., in the Basin with fewer other issues to weigh in their decision-making. In addition, zones with elected supervisors are specifically released from using the county engineer to administer the zone. Together, these powers imply a greater level of independence from each County Board of Commissioners, and hence, each county.

A multi-county interlocal agency could be established among flood control zone districts and a surface water utility or other County entity that could provide the revenue needed to cover its share of interlocal agency costs. However, the establishment of the initial

interlocal agency, and the subsequent transition to a multi-county flood control zone district, is made much easier when the parties have like powers – as they would if they were all FCZDs.

## **Watershed Management Partnerships**

Since its enactment in 1967, the Interlocal Cooperation Act (Chapter 39.34 RCW) has allowed Washington public agencies to carry out any of their powers on a cooperative basis with other such agencies. “Public agencies” are defined by RCW 39.34.020 to include municipal corporations, quasi-municipal corporations, special purpose districts and state agencies. Any of those entities are empowered by RCW 39.34.030 to enter into interlocal agreements with each other, with state or local agencies of other states, and with federally-recognized tribal governments, to jointly exercise any of their powers, privileges or authorities.

When governments decide to carry out their powers on a joint basis, the Interlocal Cooperation Act lets them organize their activities in several ways: by organizing as a loose, unincorporated “joint board,” as a nonprofit corporation, a limited liability company (LLC) or a partnership. LLCs and partnerships are rare; most interlocal entities organize either as nonprofit corporations or as joint boards.

There are some restrictions on what interlocal entities can do. Such an entity may carry out only those activities that all of its members may undertake. For example, an interlocal entity formed by health districts and health departments may provide public health inspections or programs on a cooperative basis, but if several sewer districts were to join with several public health districts to jointly carry out programs, those programs would have to be restricted to wastewater and drainage-related activities. This is a “lowest common denominator” rule. An interlocal entity formed as a joint board does not have clear authority to buy and sell property, own property, hire employees, and take other actions that are usually carried out by distinct corporations, and a joint board does not shield its member governments from liability arising from its actions. Interlocal entities (regardless of how they are organized) normally may not issue bonds or condemn property—they must depend on their members to do that for them.

Watershed management partnerships (“WMPs”) are a special type of interlocal entity formed under RCW 39.34.190 -.220. Two or more “public agencies” may form a WMP “for the purpose of implementing any portion or all elements of a watershed management plan, including the coordination and oversight of plan implementation” (RCW 39.34.200). The statute gives members of watershed management partnerships an array of tools to carry out a number of water-related plans, including watershed plans under RCW 90.82, watershed management elements of the Growth Management Act (GMA) plans, coordinated water systems plans under RCW 70.116, and various other water plans. “Watershed management plan” is defined by RCW 39.34.190(3) to include any type of plan to address “water supply, water transmission, water quality treatment or protection, or any other water-related purposes.” If formed as a separate legal entity, i.e., a public nonprofit corporation, a WMP (in contrast with other types of interlocal bodies) is authorized to issue bonds to finance its projects (RCW 39.34.210), however WMPs can’t levy taxes or rates – their members must do that. Certain WMPs (currently

only Cascade Water Alliance) may directly exercise the power of eminent domain under RCW 39.34.215.

As a public nonprofit corporation, a watershed management partnership for the Chehalis River Basin could devise its own structures for representation and voting and codify them in the interlocal agreement. Representation options range from large decision-making bodies composed of multiple parties (to include the counties, the State, the Chehalis Tribe, and impacted cities), to relatively small decision-making bodies (from three to five supervisors), perhaps supported by an advisory board. Interestingly, the Chehalis Basin Partnership, an existing and separate planning organization formed to assess and manage the water resources of the Chehalis River Basin, is a watershed management partnership. Representatives of the counties, cities, tribes, water utilities, ports, state departments, federal agencies, and other interests compose the membership, and make decisions by consensus. It is an example of a large decision-making body.

Should a watershed management partnership be chosen as the initial form of the interlocal agency formed to coordinate basin-wide flood hazard management, the likely parties to the interlocal agreement, and those who would provide funding for the interlocal agency, include only the FCZDs of each county – with the possible inclusion of the Chehalis Tribe and the State of Washington. We therefore favor a smaller board of up to nine members made up of representatives of the three counties, with the possible inclusion of the Chehalis Tribe and the State of Washington. Such a structure aligns well with the membership of the underlying county FCZDs, but would require the participation of a strong advisory committee. If not on the board, the advisory committee would include Chehalis Tribe, State of Washington, as well as city representatives, and would provide input to the board as a prerequisite to any budget or cost allocation decisions.

Possible voting structures similarly vary from one member one vote, to weighted voting (e.g., by revenue, population, etc.). A larger board, structured to include representatives of agencies that do not participate financially, could allow votes of all members on non-financial issues while limiting votes on financial issues such as cost allocations to parties of the interlocal agreement who contribute financially to agency activities. A nine member board composed of three representatives from each county might be well served under straight majority rule, because no single county could make decisions without substantial support from one or both of the other two counties. Examples of the types of decisions to be made, and possible voting requirements, are provided in Exhibit 1 below:

#### **Exhibit 1: Recommended Voting Requirements**

<b>Decision Type</b>	<b>Method</b>
1. Cost and revenue allocations to counties	Supermajority
2. Watershed management partnership work plans and budgets	Simple majority
3. Project authorization	Simple majority

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|--|-----------------------------|
| 4. Project Sponsor with Army Corps of Engineers  | Simple majority or designee |
| 5. Flood Hazard Management Plan Updates          | Simple majority             |
| 6. Contracts with entities to execute work plans | Simple majority or designee |

## **Role of the State of Washington**

The State of Washington is a key stakeholder in the Chehalis River Basin. Interstate 5 and a number of State highways are inundated in flood events. There are several options available to enable the State to participate in the interlocal agency. In addition to the strong advisory board concept, the State could retain a non-voting membership and make contributions to agency activities through payments or in-kind contributions (e.g., constructing capital projects). As an alternative, the State could retain a voting membership on all but financial issues.

## **The Chehalis Tribe**

The Chehalis Tribe is similarly affected by flooding in the Basin. Again, there are several options available to enable the Chehalis Tribe to participate in the interlocal agency. In addition to the strong advisory board concept, the Chehalis Tribe could retain a non-voting membership and make contributions to agency activities through payments or in-kind contributions (e.g., constructing capital projects). As an alternative, the Chehalis Tribe could retain a voting membership on all but financial issues.

## **Cities in the Basin**

There are a number of cities in the Chehalis River Basin that are impacted by flooding and a number of cities that would ultimately be impacted by flooding solutions in the Basin. Several of the cities in the Basin have existing stormwater utilities that charge ongoing rates for stormwater management. It is assumed that the interlocal agency will provide very different services – with a focus on regional, basin-wide river flooding solutions as opposed to local stormwater management. However, it is also true that most of the funding for the interlocal agency, whether from property taxes, rates, or assessments, will come from city residents and businesses. Perhaps the best way city representation could be achieved would be through participation on a strong advisory board, requiring input from members before votes by the decision-making body on any budget or cost allocation decisions.

## **Preliminary Recommendations**

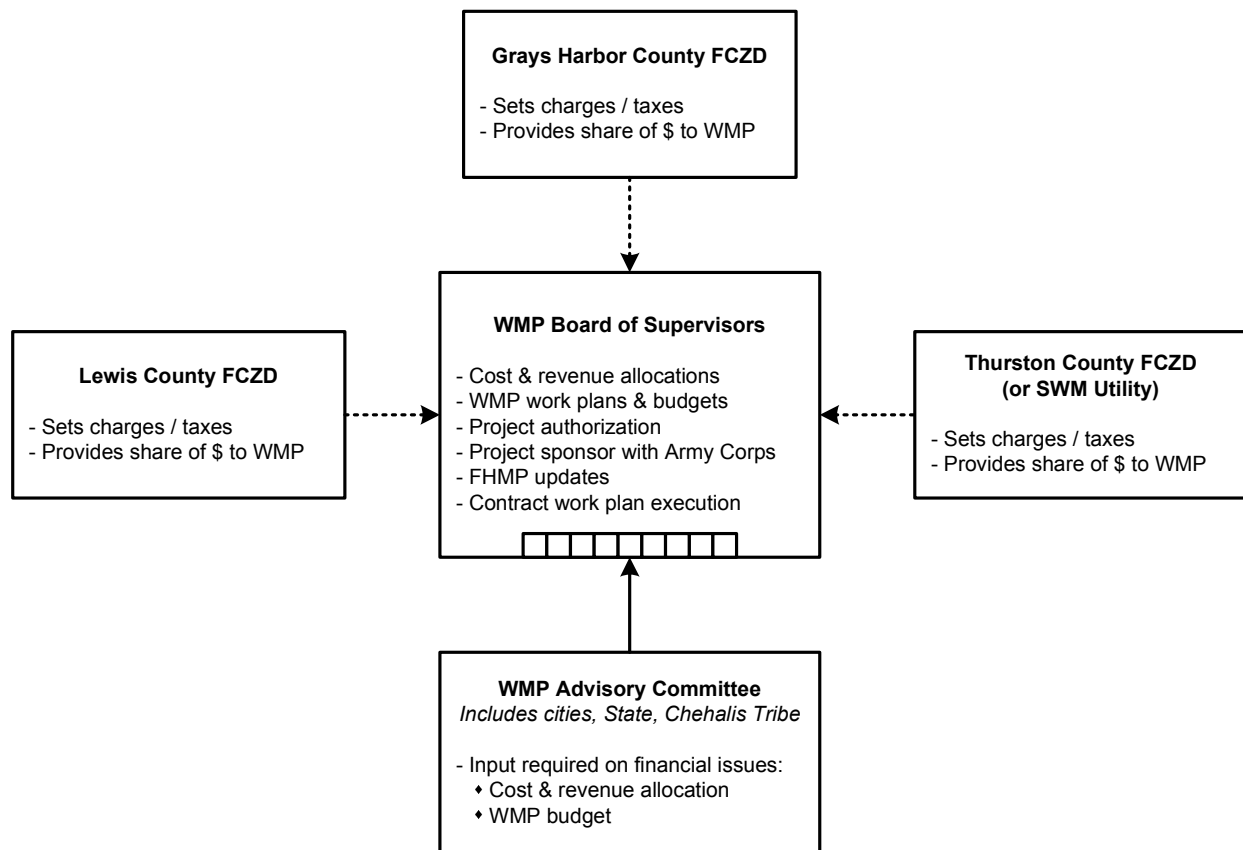
Form a nine-member decision-making body (board of supervisors), made up of the three commissioners from each of the three participating counties, with the potential addition of one additional Board member for the State and the Chehalis Tribe.

Support the Board with a strong advisory board, made up of State and Tribal representatives (if not on the board), and city representation. The board of supervisors must solicit input of advisory board on any budget and cost allocation decisions.

Follow voting requirements as provided in Exhibit 1 above.

A graphic representation of initial proposed WMP governance is provided below in Exhibit 2.

## Exhibit 2: Proposed WMP Governance



### Exhibit 3: Proposed WMP Governance with Expanded Board of Supervisors

